

# BUCKLEY LAW OFFICE, P.C.

EXHIBIT 2

\*DATE 2/21/2011

HB 50

DANIEL P. BUCKLEY

Montana Trial Lawyers Association (MTLA)  
Board of Directors, MTLA  
Summa Cum Laude Graduate, Gonzaga Law School

American Trial Lawyers (named top 100 trial Lawyers)  
American Association for Justice  
Gonzaga Law Review

February 17, 2011

Montana House Judiciary Committee  
Montana House of Representatives  
PO Box 200400  
Helena, MT 59620-0400

Re: HB 50

To the House Judiciary Committee:

This letter and comment is intended to address HB 50, sponsored by Representative Ken Peterson, pertaining to the Dram Shop Statute. I was at the hearing this morning, but was unable to testify due to time constraints. My comments are focused on the Dram Shop Statute damage caps.

A dram shop case is very difficult to begin with. I represented a family who lost their 20 year old son due to being overserved as a minor. The case was captioned *Estate of Richard Brook Presler, et al. v. Trail Stop Enterprises, Inc., dba Buffalo Station, Cause No. DV-05-669 Montana 8<sup>th</sup> Judicial District Court, Gallatin County*. The defense in the case was typical of many defenses in a dram shop case, which are very difficult to overcome as a plaintiff, namely: (1) the consumer of the alcohol is to blame, not the tavern; (2) if a minor is involved, the minor is to blame as he/she was breaking the alcohol consumption laws; and, (3) the tavern would have no reasonable means of detecting whether a person is visibly intoxicated (often the defense focuses on the crowded bar situation, lack of witnesses to visibly intoxicated, too many customers for a bartender to recognize or recall visible intoxication, etc.). I can tell you from personal experience of trying this case, that jurors are very reluctant to look at the tavern first; rather, as was repeated during the voir dire jury selection process, the consumer is the one to blame. This is all to say that if a jury determines negligence on the part of the tavern, the facts have to be very well established (more so than most civil cases) that the tavern acted completely irresponsibly.

In the above-referenced case, the jury not only found that the tavern had acted with negligence but also with malice. We did not submit a specific non-economic damages request to the jury; rather, the jury was asked to award what they believed was fair in the circumstances. The jury award \$2,000,000 to the parents of this young man. Additionally, the jury awarded \$350,000 in punitive damages.

WWW.DANBUCKLEYLAW.COM

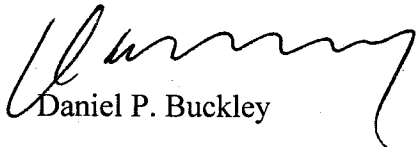
125 WEST MENDENHALL ST., STE. 201 BOZEMAN, MONTANA 59715-3544 PHONE: 406-587-3346 FACSIMILE: 406-585-7654

\* A PARTNER WITH ANGEL, COIL & BARTLETT

After the verdict, the trial court, following the current Dram Shop Statute, reduced the non-economic damages to \$250,000 and reduced the punitive damages award as well. If this case had involved the death of this young man in nearly any other negligence of another case, the jury award would not have been reduced as it was in this particular instance. However, even though the tavern acted with negligence and malice in this case, the parents were left with the distinct impression, after the verdict was reduced, that the tavern had once again escaped a sense of responsibility and accountability (notably, had these parents recovered enough funds, they had intended to finance a new taxi service which would have provided free rides for intoxicated patrons).

In summary, dram shop cases are very difficult from the beginning. The defenses are well presented, and juries are very hesitant to go beyond the concept of personal individual responsibility to find negligence against a bar. However, should a jury reach that decision, it is respectfully submitted that their compensatory damage finding should be allowed to stand. I urge your due consideration of HB 50.

Respectfully,



Daniel P. Buckley